









White's adm'r et al.  
vs.  
Carrieco's adm'r.

From Hardin.

Isaac Carrieco died intestate in the county of Hardin. At the time of his death he was the guardian of Elizabeth R. Colvin. After administration was granted upon the estate of Carrieco, this suit was brought for the settlement and distribution of the estate.

Amongst the claims presented in said suit against the estate, were the claims of the appellants against Carrieco as guardian of E. R. Colvin for board, medical services and other things furnished the ward by the direction of the guardian.

It was contended, in behalf of the appellants, that these claims against Carrieco's estate were entitled to preference and priority of payment. The Circuit Judge rejected them as preferred claims, and directed that they should be paid *pro rata* with the other debts against the estate.

From this judgment and order of the Circuit Judge this appeal is taken.

Judge Wood delivered the opinion of the Court.

Section 33, chapter 37, Revised Statutes, page 340, relates to the settlement and distribution of insolvent estates. This section provides that the estate of a ward remaining in the hands of a decedent, together with certain other enumerated claims, shall be paid in full before any *pro rata* distribution shall be made.

It appears from the record that at the time of Carrieco's death there was estate in his hands belonging to his said ward, E. R. Colvin, sufficient to pay these debts against her, and that there are funds in the hands of Carrieco's adm'r sufficient to pay them. The ward certainly has a preference under the statute to the extent of her estate remaining in the hands of the guardian at the time of his death.

The ward being thus entitled to payment to the extent of her estate remaining in the hands of the guardian before a *pro rata* distribution is made, the general creditors are excluded *pro tanto* from an equal distribution of the assets; and so far as her creditors are substituted to her right of preference, the claim of the ward will be reduced.

So that the result to the general creditors is precisely the same, whether the claim to priority is asserted through the ward or her creditors. Their dividend will neither be increased nor diminished by refusing or allowing to the creditors of the ward a participation on the preference secured to her by the statute. If they get the funds to the extent of their claims, by reason of the preference, that far she will not get them; and if they do not get them, she will.

And as all the parties are in court, we think in equity the chancellor should settle the rights of all the parties by allowing the creditors of the ward to be substituted to her rights as far as their debts may go. The judgment and order of the Circuit Court are therefore reversed, and the cause remanded for further proceedings not inconsistent with the principles of this opinion.

Philips  
vs.  
The Cov. & Gn. Bridge Co.

Kenton Circuit Court.

This action was brought against the appellant on a writing subscribed by him as follows: "We, the undersigned, hereby subscribe and promise to pay to the Covington and Cincinnati Bridge Company the respective amounts attached to our names, as subscription for stock in said company, payments to be made at such times and in such amounts as shall be demanded by the directors of said company, provided no demand shall be made until after the sum of four hundred thousand dollars shall have been subscribed, including those of ours."

The defense to the action was, that the sum of four hundred thousand dollars in actual available stock had not been subscribed when the demand upon defendant was made.

The company recovered judgment, and this appeal was prosecuted by Philips.

The principal questions in the case relate to the validity of some of the subscriptions of stock which the jury were permitted by the court below to take into estimate in determining what amount of stock had been subscribed before the appellant was called upon for payment of his subscription. These questions are:

1. The city of Covington subscribed \$100,000. That subscription was objected to on the ground that the city had no authority to make it.

2. Stock was also subscribed by contractors, which some were to pay in work and materials and some in services. These were objected to because they were not payable in money, and because their payment depended upon the continuation of the work, and were therefore conditional in their nature.

3. In the contract with the Buena Vista Stock Company and the bridge company, the former are allowed the privilege of converting one-half of the stock which is subscribed into eight per cent. bonds of the bridge company, so soon as it may issue any such bonds.

The court, per Chief Justice Simpson, held—That the city had the right to make the subscription under the act of the Legislature of February, 1856, (1 *ed.*, Secs. 463, 475-50, page 315) entitled, "An act to amend the charter of the Covington and Cincinnati Bridge Company." This act is not in violation of the 37th section of the 2d article of the constitution which declares that "no law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title."

The purpose of this provision was to prevent a practice which had grown up of inserting in the same act of the Legislature subjects which had no relation to each other, and where the title gave no indication whatever of some of the subjects of the bill; and to prevent the improper influences which were brought to bear on the passage of such bills, by a union of such incongruous subjects in the same bill.

It was not intended to restrict legislation to such an extent as to render different acts necessary, where the whole subject matter is connected, and may be properly embraced in the same act.

This prohibition should receive a reasonable and not a technical construction, and keeping in view the evil designed to be remedied, should be applied to acts of the Legislature only that are obviously within its spirit and meaning.

Where the provisions of a statute relate, directly or indirectly, to the same subject, they have a natural connection, and are not foreign to the subject expressed in the title, the prohibition should not be applied.

The first section of the act referred to the capital stock, which was increased to \$700,000.

The second, and only remaining one, gave power to the company to sell \$100,000 of the stock to the city of Covington, to be subscribed

and paid as might be agreed on by the company and the city, and in payment the city might sell her bonds to the amount of \$100,000; the amount of every bond and the times and places of payment of principal and interest to be fixed by said city—the city being authorized to levy a tax of ten cents on the \$100 worth of taxable property therein in 1856 and in 1857 for the purpose of paying the interest on the bonds.

The power conferred on the Bridge Company to sell, and on the city to subscribe and pay \$100,000 of the stock, is all that is involved in the question under consideration.

The provision, as far as relates to the Bridge Company, is not denied, is consistent with the title of the act; but it is contended, as it relates to the city of Covington, it is entirely foreign to the object therein indicated.

The power to sell stock to the city necessarily required a power to be conferred on it to subscribe and pay for it; for without such power the power to sell would be nugatory.

The subject is the same, although it relates to a transaction to which two corporations are parties, one of whom only is named in the title of the act. If the act had given the city power to subscribe stock in any other than the company named in the title, then the provision would fall within the prohibition. But as the subscription relates to the stock in the Bridge Company, so far as the action of the city is concerned, relates to subscription to that company by the city, the title of the act is sufficient, and sufficiently expressive of what is in it.

The fact that after the city had subscribed and paid \$100,000 on the subscription the company took the city's bonds at par for the balance, when the bonds were not worth par, can only raise a question as to the power of the company so to receive payment—a question not involved here.

The subscription was made without condition, just as other subscriptions, and no other action of the company can effect the legality of it as to amount. If the company, by receiving bonds, was injuring other stockholders, they could have applied a remedy. The court did not therefore err in the instruction to estimate the city subscription at \$100,000.

The proof showing that the materials to be furnished in payment of stock were at as low prices as they could have been bought with money, the compensation to be allowed for services reasonable, and the stock given therefor at par, no valid objection existed on these grounds to calculating the stock taken for these matters in ascertaining the amount subscribed.

The contract contemplated a regular progress of the work to completion, and therefore the subscription in services and materials were not conditional.

The instructions given for appellant, "that the subscriptions of persons making contracts with the appellee for work on and materials furnished for the construction of the bridge should be computed at their value to the appellee at the time they were made, as compared with the value of subscriptions payable in money" was correct.

This gave power to the jury to reduce the nominal amount of the stock subscribed, if they believed it was of less value than stock payable in money. And the instruction to the jury, to exclude the stock of persons insolvent, infants, and married women, unless such subscriptions had been paid, was also correct.

The remaining question about the contract with the Buena Vista company does not affect the validity of the subscription of stock. The privilege to pay the bonds is only to the bridge company, and will not be carried into execution unless to the interest of that company.

If the stock should be of less value than the 8 per cent. bonds, the bridge company would have no right to issue them to the prejudice of other stockholders.

Judgment affirmed.

Smith, &c.,  
vs.  
Wilson.

Mrs. Smith, while the wife of Caruthers, in November, 1853, executed a mortgage on a house and lot which belonged to her when she married Caruthers, to secure a debt evidenced by note of the same date to Wilson for \$377 50—the note being signed by both Caruthers and wife. Caruthers died, and his wife after wards married Smith. Wilson brought this suit against Smith and wife to foreclose the mortgage, and subject the property to the payment of the debt.

Smith and wife answered, relying upon various grounds of defense. They charge that Mrs. Smith, being the wife of Caruthers, was compelled by him to execute the note and mortgage, by reason of his threats and coercion; that the house and lot was her property; that the debt secured was that of Caruthers, and that the note and mortgage were promissory and void.

The court below rendered judgment subjecting the property, or so much of it as was necessary, to the payment of the debt.

From that judgment this appeal was prayed.

The opinion of the court was delivered by Judge Duval:

The record contains no proof of the threats or coercion alleged in the answer, nor is it alleged or shown that the debt was contracted for necessities furnished Mrs. Caruthers or her family; and it may be conceded, the debt was the debt of the husband alone, and the note wholly inoperative as to Mrs. Caruthers.

So the only substantial question is, whether the mortgage executed jointly by her with her husband, whereby she conveys real estate of which she was legal owner to secure a debt of her husband, was binding on her under the laws in force when it was executed in 1853.

By the Revised Statutes (see 2d chapter on Conveyances, page 197) it is provided that "married women may convey any real or personal estate which they own, or which they have an interest, legal or equitable, in possession, reversion, or remainder."

This section is comprehensive enough to embrace every conceivable interest or right which a married woman may have in property real or personal, and every kind of conveyance by deed. A deed of trust or mortgage is a conveyance by deed in the legal sense of that phrase, as used in the statutes.

That chapter on conveyances contains several sections in relation to deeds of trust and mortgages exclusively, which convey a legal or equitable title to real and personal estate.

This court in the case of *Seabrook vs. Watkins*, (9 B. Mon., 544) held that the statutes referred to "are sufficiently comprehensive to empower a married woman to make a deed of any description, not a deed merely of bargain and sale founded upon a valuable consideration, but a deed of gift or mortgage or release, or a deed of conveyance for any purpose whatever; and such deed, when made and acknowledged by the parties with all the legal formalities required by the statute, becomes as effectual for every purpose, and as obligatory on the married woman, as if she had been at the time a *free sole*."

But one provision of the Revised Statutes puts any restriction upon conveyances by married women allowed to be made by the 20th section aforesaid, and that is found in the 17th section of article 4, of the *Bill of Rights and Writs*, page 395, which prohibits a married woman,

under certain circumstances, from alienating or conveying her separate estate. But the provisions of this section have no application to, and cannot effect the right or power of a married woman to convey her legal or equitable estate in the mode prescribed by law.

Article 2 of same chapter, defines and limits the marital rights of husband and wife with respect to the property of each. This provision, which exempts the real estate and slaves of the wife from the husband's debts, was not intended to qualify or alter the power given her to convey by deed.

If she had joined with her husband in an absolute deed to pay the debt which was secured by the mortgage, certainly a court of equity would not have set that deed aside upon the ground that her real estate was by law exempt from liability for her husband's debts, if she voluntarily executed the deed and acknowledged it in the form prescribed by law.

If the argument drawn from the preceding restriction would operate as a total deed of mortgage, it would have to operate equally as to absolute deeds made to pay the husband's debts.

It has been decided in the case of *Seabrook vs. Watkins*, *supra*, that a deed by husband and wife to a third person, reciting on its face that it was made to him, to be reconveyed to the husband, is good if not tainted with fraud.

The effect of almost every such deed is to place the consideration thereof in the power of the husband; but this fact does not change or restrict the power given by the 20th section, *supra*.

Mrs. Smith having executed this mortgage, acknowledged it in the manner prescribed by law, in the absence of any evidence of improper influence on the part of her husband over her, was properly held bound by the court below. Judgment affirmed.

From the Polkess Herald.

To the People of Kentucky

Through the partiality of my Democratic friends I was nominated for the office of Lieutenant Governor of the State; and such was the unanimity of the Convention in their call upon me to take that position, that, as a Democrat, I did not feel at liberty to decline.

It was my purpose to canvass the State thoroughly, and discuss, fully, all the great political questions of the day, so that none could be misled as to my views and opinions. In this I have been disappointed by a sure affliction, by which I have been confined to my room, and, I may say, since early in March last. But through the skill of Professor Hancock, of Philadelphia, and only one of the complicated diseases with which I was afflicted gave way, and I am now convalescent. I regret to say too feeble to engage in the canvass. My physicians, however, inspire me with the confident hope, that I will be fully restored in time to discharge the duties of the office, if elected. During my extreme illness I received numerous communications from my friends in Kentucky, (some of them political), to all of which I would have been pleased to have responded fully, but was physically unable to do so. Such was my prostrate condition at one time, that I was strongly inclined to withdraw from the contest; but of a number of letters received from various parts of the State upon the subject, all with one single exception, urged most strongly to continue a candidate; and with but the single purpose of meeting the wishes of my friends and as far as possible to aid in carrying out the principles of the Democratic party, which I have devoted my whole political life, I yielded to the advice thus given. Without intending, here, to discuss the political topics of the day, it may not be inappropriate for me to mention in a single remark in reference to the question of slavery in the Territories. By the legislation of Congress, it is clearly the right and the duty of the Territorial Legislatures to give adequate protection to persons and property (slaves included) in the Territories; and I earnestly and most confidently hope, that that duty will be so performed, as that no occasion will ever arise for an appeal to Congress on that subject. If, however, doomed to disappointment in this confident hope, and from bad faith on the part of the people of the Territories, the rights of slaveholders should be disregarded and outraged, I trust that very few will be found to deny that to Congress belongs the power and the duty to offer just protection.

Being thus before you as a candidate, and as such having been selected as the object of the most violent and unrelenting abuse on the part of a partisan press throughout the State, may I not indulge the hope that I shall be favored with the generous support of the entire Democratic party of the State.

Your obedient servant,

LENN BOYD.

THE NEW SLAVERY PROTECTIONISTS.—The Oppositionists, with unflinching efficiency, come before the country in this canvass, claiming peculiar merit as the protectors of slavery in the Territories. The Democratic party removed the Missouri restriction in the passage of the Kansas bill, and for the first time in our history, gave practical force to the doctrine of non-interference with Congress in its power to protect slavery in the Territories. The very right of the slaveholder to go with his property to the Territories, which the Opposition are now so busy about protesting, was secured by the act of the Democratic party, and against the most determined opposition. The Know-Nothing party in the 12th section of their first platform, expressly pretended to expect that they would be empowered by Congress to establish or prohibit slavery in the Territories, and afterwards stood out that section, and by a bold and unscrupulous denunciation of the Democratic party for repudiating the Missouri restriction. Mr. Crittenden, in a speech in the United States Senate, pronounced the repeal of the Missouri Compromise a blunder—long after the fact, and long after the Missouri Compromise had been repealed, and that it was unconstitutional from the beginning. And yet, these men who have opposed the Democracy in every step they have taken to secure the great constitutional right to the people of the South, ask to be received as its special guardians and protectors.—*Paris Flag.*

IF some of the Know-Nothing journals are misrepresenting the doctrine lately enunciated by Gen. Cass, and attempting an appeal to the foreigner in that score. The very men who were three years ago knickered, and murdered thousands of citizens, because they had the nerve to vote to exercise the rights guaranteed by the Constitution, are now endeavoring to gain favor in their eyes by insisting that the Democratic party is not sufficiently careful of their interests. Three years ago they denounced these fore-noon citizens as criminals and patriots, and now approach them as if they were fools, who can be misled by their miserable hypocrisies. A contemporary at Georgia these three time-serving demagogues, that if they really want a chance to cry over the wrongs of the poor foreigners, they had better go to Baltimore, New Orleans, or Louisville, and visit the graves of foreign-born citizens, murdered in cold blood by the Know-Nothing, for exercising the right of voting. There are enough such graves in those cities to expand all their veins. There is a stern reality in those graves, infinitely better deserving of tears, than imaginary hardships and fictitious wrongs.

See Statesman.

67—Rev. Dr. Campbell, President of Georgetown College, sailed from New York, on Wednesday last, in the steamer Glasgow, for Europe.

## Arrival of the Etna—Particulars of the Battle of Solferino.

New York, July 13.—The steamship Etna, from Liverpool on the 21st inst., arrived at this port this morning. Her advice are the same as those brought by the Canada to Halifax.

It is believed that in some quarters, that the French loss at the battle of Solferino amounted to from 16,000 to 18,000 men, as follows: Gen. Niel's corps 6,000 to 7,000; d'Almeida's nearly 5,000; McMahon's 2,000; and Canrobert's 1,000, besides cavalry in the artillery and special corps. The French people are said to be dissatisfied with the seamanship of the details as yet published in the *Moniteur*.

The *Public* says Napoleon had an epaulette thrust away. General Dien is reported among the dead. The Austrians had seven or eight generals and very many of their superior officers wounded. Gen. Groussak was killed.

Some of the French infantry regiments were nearly cut to pieces. The Piedmontese suffered so severely as to be incapable of forming into line of battle.

The Vienna correspondent of the *London Times*, writing on the 25th, says, that some days must elapse before the complete returns of the losses of the Austrians could be received.

The same writer says that the Italian regiments in the Austrian army have become very difficult to manage. The men desert by scores and hundreds.

In the neighborhood of Trieste a whole battalion had raised the cry in favor of Victor Emanuel.

A vessel on the coast, under the American flag, had been detected in the act of receiving the deserters on board after dark.

The people of Milan have made threatening demonstrations against the Austrians, who in public manner are keeping up a secret correspondence with Austria.

The municipal body of Vienna have voted to maintain peace and order, in case it was necessary to disband the garrison at Vienna to the seat of war.

Thousand masses of French soldiers are marching in Piedmont, near the Alpine frontiers. Several hundred have been sent to the military commission of the army as executed. Headquarters were at Valchiera, where Prince Napoleon was expected to arrive on the 25th inst.

It is reported that at Solferino nearly every officer and man of the artillery attached to the Imperial Guard was *hors de combat*.

The Austrian army of the battle fought at Solferino, numbered 23,000 killed, wounded, and missing.

The Austrian official report of the battle says the right wing of the army occupied Bozzolunga, Solferino, and Caverrina. The left wing was at the 24th, to Gussato, and Castiglione, and repulsed the advancing enemy on all sides. A- the Imperial army continued its advance towards Castiglione, the enemy, who had also assumed a defensive position, was driven back.

There was a general engagement between the two armies at 10 o'clock, or thereabouts, on the morning of the 24th. The right wing, which was formed of the second army, under Count Scharf, maintained the position which it had originally occupied in the first line of battle, at two o'clock in the afternoon, and the first army of the left wing, under Count Canrobert, continued to fight in the direction of Castiglione towards three o'clock.

The enemy made a vehement attack on Solferino, and after several hours hard fighting obtained possession of the place, which had been heroically defended by the 4th corps d'armee.

An attack was then made on Carriana, which place was heroically defended until evening by the first and second corps d'armee, but was eventually left in the hands of the enemy.

While the struggle for Solferino and Caverrina was going on, the 5th corps d'armee, which was on the other flank right wing, advanced and repulsed the Santhian troops opposed to it, but this advantage did not enable the Imperial army to recover the positions that had been lost in the center.

The third and fourth corps d'armee, which were supported by the eleventh corps, were engaged on the left wing, and the reserve cavalry attached to this wing made several most brilliant attacks.

On such heavy losses, and the fact that the left wing of the first army was unable to make progress on the right flank of the enemy, who directed his main force in the center against Voltra, led to the retreat of the Imperial Royal Army.

It began late in the evening during a very violent storm.

The correspondent of the *London Herald* says: So little did the French expect a battle that, on the previous night, a message from the King, asking for supports in case he should be attacked, was met with a refusal, on the ground that an attack by the Austrians was not probable. At day-break, however, the corps of Marshal d'Almeida came in sight of Solferino, and was immediately set upon by a large Austrian force, which rushed down the hill and fought with the greatest fury.

The Marshal resisted the attack to the best of his power, and sent off his aide-de-camp for supplies, but it was not before three hours of frightful carnage had ceased that the corps of Gen. Niel made its appearance.

The Austrians were slowly driven back, and every now and then there was a pause. The French continued to go ground. Heaps of their own and the enemy's corpses mark the fluctuations of the fight. The Austrians were thus slowly driven out of Solferino, but all of a sudden they made a tremendous burst forward and the French were driven down the hill.

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Skirmishes have taken place near Bernio, between the French corps of Valterino and the Austrians guarding the Stelvio pass.

The Austrians number thirteen companies of infantry and two companies of carbonniers. They occupy positions between Gussato and Trafal, and a battery has been placed in position to command the road to Stelvio. Barriers have also been erected, and there is great fear of a descent by Garibaldi.

The Swiss Federal Council has decided, in concert with the belligerents, that any soldier seeking shelter on Swiss territory shall be set back to their country, their governments engaging not to employ them again in the present war. The Garrison of Laveno and the soldiers of Garibaldi's corps will consequently be sent back.

It is said that the Austrian monarch ordered the reorganizing of the Mincio, in opposition to the advice of Gen. Hess.

The Sarlinian account of the battle of Solferino says: On the 24th, the Emperor ordered the Sardinian army to occupy Pozzolunga and invest Peschiera, while the French occupied Carriana. Marshal d'Almeida met with unexpected difficulties, and the Piedmontese reconnaissance also encountered great forces of the enemy. While d'Almeida performed prodigies of valor at Solferino, the masses of the enemy continued to advance on Castiglione.

The Emperor, perceiving that he was low, deployed the corps of Marshals Niel and McMahon in place, and ordered Canrobert to join with the Imperial Guard. The King had been engaged to direct all possible force against Solferino, in accordance with the French plan, and d'Almeida had already committed the movement to his male, when news arrived that the emperor was on the 24th and 25th divisions were in danger of being cut off at Desenzano by a superior force.

The King recalled Fanti, and ordered the brigade of Asolo to return promptly to San Martino and Bivio. Marshal d'Almeida was at Solferino, and the Emperor was at Castiglione. The King had been engaged to direct all possible force against Solferino, in accordance with the French plan, and d'Almeida had already committed the movement to his male, when news arrived that the emperor was on the 24th and 25th divisions were in danger of being cut off at Desenzano by a superior force.

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